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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/628,532	07/31/2000	Riccardo G. Dorbolo	062891.0370	5610

7590 02/16/2005
Baker Botts LLP
2001 Ross Avenue
Dallas, TX 75201-2980

EXAMINER

MAURO JR, THOMAS J

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

09/628,532

Applicant(s)

DORBOLO, RICCARDO G.

Examiner

Thomas J. Mauro Jr.

Art Unit

2143

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 13-38.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


2/7/05

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments fail to overcome the previous (final) office action.

(A) Applicant contends that the combination of Ghai, Gerstel and Pomp fail to teach reprogramming the redirection memory to associated the routing parameter set in the routing memory with the second line card, whereas claim 13 recites this limitation.


In response to argument (A), Applicant admits that (See page 16 of AF amendment) a new set of routing information, i.e. parameters, is loaded when a new line card is activated. Based upon the broad claim language used in claim 13, reprogramming a memory to associate new routing parameters is broad enough to read on the loading of a new set of routing information, as Pomp teaches at Col. 11 lines 65-67 - Col. 12 lines 1-11 and lines 46-51 and Col. 15 lines 19-23, 38-49 and 55-62. Thus the memory is reprogrammed to include the new routing parameter information set when the new line card is activated. Thus, the Examiner demurs to this assertion as loading a new parameter set into a routing memory reads on reprogramming a memory.

(B) Applicant contends that there is no motivation to combine Ghai, Gerstel, and Pomp and furthermore that the Examiner has used hindsight reasoning for the motivation to combine.

In response to argument (B) that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(C) Applicant contends that the combination of Ghai, Galles, Madonna and Bartholomew fail to teach a controller operable to reprogram the redirection memory to change associations of the instruction sets with the line cards, whereas claim 26 calls for this limitation.

In response to argument (C), the Examiner points to Galles et al. Col. 11 lines 55-62 and Col. 21 lines 64-67 - Col. 22 lines 1-6. Here, Galles explicitly states that router tables, i.e. the memory, is reprogrammed to reflect new routes. Therefore, the associations of all instruction sets which had the nodes being routed one way must be changed to reflect the new path. This is achieved through the software programmability of the router tables, i.e. reconfiguration. Thus, the Examiner demurs to this assertion as Galles clearly teaches reprogramming a memory, i.e. routing table, based upon a fault occurring.



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